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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT LEE GLASCO,

Defendant and Appellant.

A094481

(San Francisco County
Sup. Ct. No. 174338)

On March 29, 1999, appellant was charged by information with possession of cocaine base for sale. (Health & Saf. Code, § 11351.5.) Three prior drug convictions were alleged pursuant to Health and Safety Code sections 11370, subdivisions (a) and (c) and 11370.2. A 1990 second degree burglary and one of the prior drug convictions were alleged as prior prison terms within the meaning of Penal Code section 667.5, subdivision (b).

On March 31, 1999, appellant pled guilty to the possession for sale charge and was sentenced to the upper term of five years. Execution of the sentence was suspended and appellant was placed on three years supervised probation with several conditions, including that he serve one year in the Victory Outreach Residential Special Services Home for Men, in lieu of one year in county jail, and that he submit to warrantless searches, regular drug testing, register pursuant to Health and Safety Code section 11590, possess no drugs and pay various fines.

On January 12, 2000, appellant's probation officer moved to revoke probation because appellant had failed to register, had not sought the outpatient drug treatment as

directed by the officer and had been arrested on November 23, 1999, for possession of illegal drugs.

Appellant's probation was administratively revoked on January 12, 2000. On February 17, 2000, appellant waived his right to a formal hearing and admitted a probation violation. His probation was then reinstated with the modification that he serve 28 days in the SWAP program and waive 217 days credit for time served. The term of probation was extended and all other terms and conditions were to remain as before.

On June 19, 2000, another motion to revoke appellant's probation was filed based on yet another arrest for possession for sale of cocaine base on June 16, 2000. Hearing on that motion took place on January 19, 2001. San Francisco Police Officer Hank Lum testified that on June 16, at about 6:30 p.m., he was in uniform and on foot, with his partner Officer Castel, near Natoma and Sixth Streets in San Francisco. Lum saw appellant speaking with another person. Both were in full view of the officers, standing on the sidewalk. Lum walked over to appellant, looked over his shoulder and saw two white rocks, which appeared to Lum to be rock cocaine, in the palm of appellant's hand.

Appellant was arrested and searched. Lum found no drug paraphernalia on appellant or money in appellant's possession. The person with appellant had no drugs, money or paraphernalia and was released.

Appellant's probation officer, David Almaguer, testified as to several of appellant's failures to comply with drug treatment. He also testified that when he went to see appellant in jail he read appellant his *Miranda* rights and appellant agreed to talk to him about the latest arrest. Appellant told Almaguer that on June 16, 2000, he left his hotel to go out to buy crack cocaine. He admitted that he possessed crack cocaine that day but denied trying to sell it. He further admitted that he supported his own crack habit by "facilitating" narcotics transactions among others.

Appellant testified on his own behalf. He stated that he had gone to the area where he was arrested in order to buy crack cocaine. He said that he bought some crack cocaine from a woman there and that as he was looking at it to make sure it was genuine, a police officer grabbed him. He had no idea whether what he bought was crack or bunk. He also

testified that he had bought crack from the same woman about four hours earlier, smoked it in his room and gotten high. He said he paid \$40 for the first crack and \$35 for the two rocks he had when he was arrested.

The prosecution did not call a chemist to testify. Appellant argued that in the absence of proof that the rocks actually seized were cocaine, his probation should not be revoked. At most, he was attempting to buy rock cocaine. The prosecution argued that based on the defendant's own testimony it was not required to prove that the two rocks seized were in fact cocaine base. Appellant had admitted during his testimony to using crack while on probation, indeed just hours before, purchased from the same woman. The court found this sufficient and revoked appellant's probation. Execution of the previously suspended 5-year sentence was imposed and appellant was given credit for 282 days jail, 140 days SAGE credits for a total of 422 days.

We have been asked by counsel's timely appeal to conduct an independent review of the entire record to determine whether there are any issues, which would, if resolved favorably to the appellant, result in reversal or modification of the judgment. (*People v. Wende* (1979) 25 Cal.3d 436; *Anders v. California* (1967) 386 U.S. 738.) In revoking appellant's probation the trial court based its ruling on appellant's testimony and on his admissions of probation violations to the probation officer, finding that the question of whether the two rocks seized were or were not genuine cocaine base to be irrelevant. We agree.

We find no error or any issues requiring further briefing.

The judgment is affirmed.

Kay, J.

We concur:

Reardon, Acting P.J.

Sepulveda, J.